

Bostic and Small Consultants, Inc. and 501 W. 143rd Street Housing Development Fund Corp., Petitioner and Service Employees International Union, Local 32E, AFL-CIO. Case AO-309

February 8, 1994

ADVISORY OPINION

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND TRUESDALE

Pursuant to Sections 102.98(a) and 102.99 of the National Labor Relations Board's Rules and Regulations, on November 9, 1993, Employer-Petitioner Bostic and Small Consultants, Inc. and 501 W. 143rd Street Housing Development Fund Corp. filed a petition for Advisory Opinion as to whether the Board would assert jurisdiction over its operations. In pertinent part, the petition alleges as follows:

1. A proceeding, Case No. SE-58569, is currently pending before the New York State Labor Relations Board in which the Union is seeking certification of a one-member unit employed by Bostic and Small at 501 W. 143rd Street, Brooklyn, New York.

2. Bostic and Small Consultants, Inc., Brooklyn, New York, is a corporation engaged in, inter alia, the business of performing the services of a managing agent for residential apartment buildings in the city of New York. It is a joint employer with the owners of such apartment buildings where it performs services such as collecting rent from tenants, operating, maintaining, and repairing the apartments, purchasing supplies, and performing all financial recordkeeping and reporting obligations. Bostic and Small is responsible for the supervision of employees who perform the building services provided to the tenants. Bostic and Small Consultants, Inc. is a joint employer, along with the corporation 501 W. 143rd Street Housing Development Fund Corp. of the employee at a building located at 501 W. 143rd Street, Brooklyn, New York, as well as other buildings referred to in paragraph three (3).

3. During the 12 months preceding the filing of this petition on November 9, 1993, Bostic and Small has managed apartment buildings which derived gross rent revenues in excess of \$500,000. Specifically, during this period Bostic and Small has grossed rent revenues

in excess of \$291,000 from 1040 Carroll Street, Brooklyn, New York, in excess of \$238,000 from 501 W. 143rd Street, Brooklyn, New York, and in excess of \$213,000 from 1212 Ocean Avenue, Brooklyn, New York. In addition, during the 12-month period preceding November 9, 1993, Bostic and Small purchased goods, supplies, commodities, and services which originated outside the State of New York valued in excess of \$50,000.

4. The Union neither admits nor denies the aforesaid commerce data, and the State Board has made no findings with respect thereto.

5. There are no representation or unfair labor practice proceedings involving the same labor dispute pending before the National Labor Relations Board.

Although all parties were served with a copy of the petition for Advisory Opinion, no response was filed.

Having duly considered the matter, the Board is of the opinion that it would assert jurisdiction over the joint employer. The Board has established a \$500,000 discretionary standard for asserting jurisdiction over residential apartment buildings.¹ As the joint employer² alleges total annual income exceeding \$500,000, clearly the joint employer satisfies the Board's discretionary standard. As the joint employer further alleges that it annually purchases and receives goods, supplies, commodities, and services valued in excess of \$50,000 which originated outside the State, the joint employer also clearly satisfies the Board's statutory standard for asserting jurisdiction.

Accordingly, the parties are advised that, based on the foregoing allegations and assumptions, the Board would assert jurisdiction over the joint employer.³

¹ See *Parkview Gardens*, 166 NLRB 697 (1967).

² The Board has traditionally aggregated the gross revenues derived from all residential buildings managed by an employer in determining whether the employer satisfies the Board's discretionary standard. See, e.g., *Mandel Management Co.*, 229 NLRB 1121 (1977).

³ The Board's advisory opinion proceedings under Sec. 102.98(a) are designed primarily to determine whether an employer's operations meet the Board's "commerce" standards for asserting jurisdiction. Accordingly, the instant Advisory Opinion is not intended to express any view whether the Board would certify the Union as representative of the petitioned-for unit under Sec. 9(c) of the Act. See generally Sec. 101.40 of the Board's Rules.